

# ATTORNEY WRITES

Welcome to the **ATTORNEY WRITES** column. This is a regular feature in *The Riparian* that address current legal topics of interest to riparian property owners.

## THE TOP ELEVEN THREATS TO RIPARIANS

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**The following are, in my opinion, the top eleven threats which will face riparians in Michigan as a group over the next decade:**

**11.           The “Every New Toy” Effect.**

Overcrowding on lakes and excessive powerboat usage are becoming big problems for many lake communities. While it is difficult to argue that one lake activity is “better” or should have priority over others, it is a physical fact that activities associated with power boats (including personal watercraft), water-skiing and high speed boating tend to “crowd out” all other lake activities on a large portion of a lake—fishing, canoeing, kayaking, sail boating, and swimming out away from shore. This problem has been exacerbated by the advent of smaller, more affordable (and more easily launched) high speed watercraft such as personal watercraft and smaller molded speed boats. As technology progresses, new motor powered “toys” (such as hydrofoils) will become more common. One can only imagine what new generation of speed boats, air cushion vehicles and jet boats will appear in the future!

## **10. Water Diversion.**

This will be an increasing headache for riparians in the future, whether the diversions are from a particular lake (or watershed) or pursuant to a Nestlé/Perrier-type groundwater diversion. Local governments can adopt ordinances and regulations for local water diversions from lakes and watersheds covering areas such as non-farm irrigation. Perrier-type water diversions will probably require state-wide legislation. It is a sad commentary that even though many legislators from both parties and both gubernatorial candidates in the last election all ran on platforms which were opposed to water diversion, special interests appear to have effectively killed any meaningful legislation to regulate Perrier-type groundwater diversions, at least for now.

## **9. Improper Storm Water Runoff and Failing Septic Systems.**

These problems are pretty much self-explanatory. Although there are many potential solutions to these problems, riparians must become actively involved at both the local and county level to effectuate such solutions.

## **8. Failing to Elect Local Government Officials Who are “Pro-Lake.”**

Never underestimate how effective a local municipality (a township, city, or village) can be in protecting its lakes if progressive people are elected

to the governing body. The impact on lakes (whether positive or negative) can be dramatic. Local governments can pursue pro-lake policies through a progressive zoning ordinance and master plan, stormwater runoff ordinance, dock and boat launching ordinance, environmental committees, and conservation policies. Unfortunately, in some townships with lakes, it is difficult to elect pro-lake officials since the majority of riparian property owners are not residents (and hence, are not local registered voters) and nonriparians on the township board are not particularly sympathetic to lake issues. In other townships, riparians have no such excuse—in many townships, there are sufficient riparian voters to be able to elect township boards comprised entirely of pro-lake people, but that does not occur due to apathy among riparians.

**7. Lack of Effective Local Zoning Regulations.**

Many townships still do not have anti-funneling regulations in their local zoning ordinances, or even any zoning at all. Proper zoning and planning policies and regulations are essential for the protection of lakes and watersheds. Seeing to it that the local municipality has the tools necessary to reasonably regulate development should be a high priority for lake associations.

**6. Cluttered Public Road Ends.**

Michigan case law makes it clear that backlot property owners and members of the public can use public roads which end at lakes for travel and

access purposes only—extensive dockage, permanent boat moorage, shorestations, sunbathing, lounging, and similar activities are unlawful. Public road ends exist at many lakes around the state. Furthermore, an increasing number of illegal floating marinas are popping up at road ends on lakes throughout Michigan. Legislation is currently before the Michigan Legislature (Senate Bill No. 481 and House Bill No. 4141) which would resolve this problem by permitting local police officials to issue tickets to violators. However, this common sense legislation is facing bitter opposition by certain backlotter groups.

#### **5. Invasive and Alien Species.**

Zebra mussels, Chinese carp, purple loosestrife, lamprey eels, Eurasian millfoil and the insect attacking Michigan's ash trees—these are just a few of the alien species which have found their way to Michigan through ballast water in ships, landscaping shipments and other means of travel. To date, federal and state efforts to eradicate these invasive species and prevent future introduction of others into Michigan's environment have been tepid at best.

#### **4. Urban Sprawl.**

Many of Michigan's lakes are located in rural or semi-rural areas. Urban sprawl not only hastens the over-development of lakes, but also causes severe overcrowding in the areas and watersheds around lakes. Unlike many other populous or industrialized states, Michigan has very few development controls in place at the state level and is considered quite "developmental

friendly.” In order to effectively combat (or at least get a handle on) uncontrolled sprawl and the alarming loss of farmland and open space, the Michigan Legislature will have to enact effective sprawl-busting tools such as laws authorizing impact fees (requiring developers to pay for their infrastructure needs and to minimize problems which their developments cause), transfer of development rights (also known as “TDRs,” a market-based approach), full funding for purchase of development rights programs (“PDRs”) and eliminating property taxation on true agricultural lands. For years, many developmental and real estate interests have vigorously fought such proposals and have effectively blocked any state-wide legislation to implement these tools. Unfortunately, the Michigan Land Use Council appointed by Governor Granholm failed to forcefully advocate the adoption of these needed tools, but instead concentrated on consensus-building “soft” approaches which will likely have limited impacts on sprawl. Worse yet, if only portions of the Council’s recommendations are adopted into law (such as the loss of local control and taking away the ability of local municipalities to require large minimum lot size requirements) without forcing corresponding concessions from the development community (such as the authorization of TDRs and impact fees), the rate and intensity of urban sprawl could actually be increased.

### **3. Preemption/Loss of Local Control.**

Although state politicians often sing the praises of local control, it is

amazing how many of them frequently vote to take away local control by legislation which “preempts” or precludes regulation and solutions at the local government level. Unfortunately, when the state takes away local authority in certain areas, there is frequently very little if any oversight of the area involved by state officials or agencies. Local control has been taken away (or severely restricted) in many areas which directly affect lakes including wetlands protection, oil and gas wells, huge industrial livestock operations, public schools in the vicinity of lakes, and mobile home parks at or near lakes. A recent bill introduced in the Michigan House would probably take away most local authority over lake access regulations. This atrocious piece of proposed legislation would, if enacted in its present or similar form, likely invalidate hundreds of local government ordinance provisions around Michigan which regulate docks, boat moorage, “funneling” and similar lakefront activities and structures.

## **2. Lobbying/Lack of Clout.**

Developers, marina operators, boat manufacturers and others who would potentially overdevelop and exploit our lakes in Michigan are very well organized, at both the local government level and in Lansing. Backlottery are becoming more organized and will undoubtedly further hone their lobbying skills in the future. Unfortunately, riparians as a group have been somewhat politically apathetic in the past. This is changing through the efforts of organizations like the Michigan Waterfront Alliance (“MWA”), but much more

needs to be done.

**1. Apathy.**

Few people would probably disagree that this will be the biggest problem which will face riparians over the next decade. In the past, riparians have been somewhat of a “sleeping giant” in Michigan. While a few riparians have been actively involved in lake stewardship (both at their local community level and state wide), the overwhelming majority of lakefront property owners in our state have been apathetic and uninvolved. In order to protect our lakes over time, that must change.

If there are any legal issues pertaining to lakes or streams which you would like to see discussed in future columns, please send a letter request to *The Riparian*. Or to  
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